Supreme Court of the United States.

No. 255.

EDWARD G. HANRICK, *Administrator etc., Plaintiff in Error,*

v.

JOSEPH NEELEY, ROBERT MOORE, WILLIAM PIERSON, AND FIELDING RUBLE, *Defendants in Error.*

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF TEXAS.

This was an action of trespass to try title, under the practice in Texas, brought originally by Edward Hanrick against a number of defendants, to recover a tract of four leagues of land in Falls County, in Texas. The petition was amended and various changes made in the defendants, by disclaimers and dismissal, so that when the case went to trial, January 18, 1869, the plaintiff, Edward G. Hanrick, as administrator of the estate of the original plaintiff, claimed, under the same title, the possession of two tracts of land, containing five leagues—both situated in Falls County—against the present defendants in error, as intruders. (Record, pp 10—11.)

Upon the trial, the plaintiff proved the issuance of a grant of the land in question, made, in the year 1833, by the State of Coahuila and Texas, Pedro Zarza, and also a

power of attorney from Zarza to Thomas F. McKinney, authorizing the latter to sell the land or to substitute another attorney with like power—also a substitution by McKinney to Robert M. Williamson, all made in the same year—1833. (Record, p.p. 19 to 28.) All the objections made on the part of the defendants to the introduction of these title deeds were overruled by the Court, and are not, therefore, now to be considered.

In further derivation of title, the plaintiff offered a conveyance of the lands in controversy, made in the name of Pedro Zarza, by Robert M. Williamson, under the substituted power, to Edward Hanrick, executed June 27, 1851. (Rec. pp 28—29.) This deed was duly recorded in 1854 and again in 1868. (Rec. pp 29—30.)

The defendants objected to the introduction of this conveyance because "there appeared upon it, the following endorsement, showing how it had been delivered."

"Edward Hanrick, complainant v. R. M. Williamson, defendant. Chancery. Filed June 30, 1851.

JAMES LOVE, *Clerk.*

I, James Love, Clerk United States District Court, certify that in obedience to the decree entered on this day in the above cause, that I delivered the within deed to complainant. June 30, 1851.

Attest: JAMES LOVE, *Clerk.*"

And the defendants contended "that the plaintiff must first produce the decree, by which he claims the deed, as a muniment of his title, before said decree could be read." (Rec. p. 30.) Whereupon the plaintiff, to avoid this objection, offered a duly certified copy from the records of Falls

County, of a duly certified copy of the decree in question from the District Court of the United States for the District of Texas, recorded in said County, under the laws of Texas, together with an affidavit of the agent of the plaintiff and other evidence shewing the destruction of the original records of said District Court.

The technical objections of the defendants to this course having been overruled by the Court, the evidence was introduced. The affidavit of E. J. Gurley, p. 32, and the oral testimony of practicing attorneys, pp. 33—34, appears sufficiently full as to the destruction of the records, and no serious question seems to have arisen about its sufficiency, although an objection, on that ground in part, was made by the defendants, p. 33. But the real objection of the defendants, as shewn by the 2nd and 3d points, p. 33, was that the original copy of the decree, from which the record in Falls County was made, was better evidence than a copy from that record; and that its loss was not shewn or its absence accounted for. And this position was sustained by the Court, and the copy of the record of the decree was excluded, to which the plaintiff excepted, p. 34—35.

The plaintiff then offered the conveyance from Zarza by Williamson to Hanrick, pure and simple, and without attempting to prove the decree, to which the defendants objected for the following reasons:

1st. Because the indorsement of the mode of delivery in the back thereof, was evidence against the plaintiff that the deed was based upon a decree of the Court, and delivered in pursuance thereof.

2d. That the plaintiff having offered to show that the deed was based upon the decree, was precluded from

4 Pet., 84, or its being found in the hand of the grantee, Ward v. Lewis, 4 Pick., 520; and, in fact, the objection of the defendants does not apply to the fact of delivery, but to the want of evidence as to the inducement to make it. If the point is, as it seems to have been understood in the circuit court, that the plaintiff is bound to produce the decree to validate the conveyance, by shewing why it was made, then the decisions in Dunn v. Games & Gilbert, 1 McLean, 321, and Games et al. v. Stiles, 14 Peters, 322, directly apply. These were rendered in a case nearly similar in facts, and quite the same in principle, and must be conclusive.

WM. G. HALE,
For Plff. in Error.